

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PENDLETON DIVISION

IVAN B. LANGLEY and KARLEE E.
LANGLEY,

Plaintiffs,

v.

SHRILY E. JONES and CHARLEE A.
PHILLIPS, JR.,

Defendants.

No. 2:11-CV-00774-PK

**ORDER ADOPTING FINDINGS AND
RECOMMENDATION**

SIMON, District Judge.

Magistrate Judge Paul Papak issued findings and recommendation in the above-captioned case on December 11, 2012. Dkt. 87. Judge Papak recommended that Defendants' motion to dismiss (Dkt. 67) be granted and the Plaintiffs' motion for voluntary dismissal without prejudice (Dkt. 71) should be denied. No party has filed objections.

Under the Federal Magistrates Act ("Act"), the court may "accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). If a party files objections to a magistrate's findings and recommendations, "the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.*; Fed. R. Civ. P. 72(b)(3).

If no party objects, the Act does not prescribe a standard of review. In such cases, “[t]here is no indication that Congress . . . intended to require a district judge to review a magistrate’s report[.]” *Thomas v. Arn*, 474 U.S. 140, 152 (1985); *see also United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (*en banc*), *cert. denied*, 540 U.S. 900 (2003) (the court must review *de novo* magistrate’s findings and recommendations if objection is made, “but not otherwise”).

Although review is not required in the absence of objections, the Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that “[w]hen no timely objection is filed,” the court review the magistrate’s findings and recommendations for “clear error on the face of the record.”

No party having made objections, this Court follows the recommendation of the Advisory Committee and reviews Magistrate Judge Papak’s findings and recommendation for clear error on the face of the record. No such error is apparent. Therefore the court orders that Judge Papak’s findings and recommendation, Dkt. 87, are ADOPTED. Defendants’ Motion to Dismiss (Dkt. 67) is GRANTED. Plaintiffs’ Motion to Voluntarily Dismiss Complaint Without Prejudice (Dkt. 71) is DENIED.

IT IS SO ORDERED.

Dated this 10th day of January, 2013.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge